IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

WP(C).No. 29050 of 2007(G)

PETITIONER:

ANTO C.L., DIRECTOR,
CHALAKUDY URBAN CO-OPERATIVE BANK LTD.,
RESIDING AT "INDU VILLA",
IRRIGATION QUARTERS ROAD,
CHALAKUDY, THRISSUR DISTRICT.

BY ADV. SRI.M.K.DAMODARAN (SR.)

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY**
   THE SECRETARY TO GOVERNMENT,
   CO-OPERATION DEPARTMENT,
   GOVERNMENT OF KERALA,
   THIRUVANANTHAPURAM.

2. **THE JOINT REGISTRAR OF CO-OPERATIVE**
   SOCIETIES(GENERAL), THRISSUR, CIVIL STATION,
   AYYANTHOLE, THRISSUR.

3. **SENIOR INSPECTOR OF CO-OPERATIVE**
   SOCIETIES, OFFICE OF THE ASSISTANT REGISTRAR,
   MUKUNDAPURAM.

BY GOVT. PLEADER SMT.ANU SIVARAMAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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W.P.(c).No.29050 OF 2007

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Dated this the 30th day of October , 2007

JUDGMENT

Ext.P4 is an inspection report made by the third respondent under Section 66 of the Co-operative Societies Act. Petitioner challenges the same. Petitioner has given Exts.P6 and P7 objection and he seeks a direction that his objection may be considered and he may be given an opportunity of hearing as mandated under Rule 66(5).

2. Learned Government Pleader on the other hand points out that petitioner has no right to be heard under Rule 66(5). She relies on the decision of this court in **Trivandrum Taluk Tax Drivers Co.op Society Ltd. v. State of Kerala** (2006(1)KLT 986). She also submits that the view expressed therein has got the support of the Division Bench. Section 68 deals with surcharge. Section 68(1) provides for holding of the enquiry either by the Registrar or through such other officer on the basis of the report or the situation mentioned therein. It is after an enquiry is held and a report is obtained that sub section 2 of

Section 68 contemplates action being taken against a person. It is made clear in the said sub section that any action is to be preceded by issuance of notice. It is submitted by the Government Pleader that in this case all that is contemplated is an enquiry under Section 68(1). It is submitted that the right sought to be established to be heard with reference to Rule 66(5) is misplaced. No action other than enquiry under Section 68(1) is at present contemplated, it is submitted.

3. Learned counsel for the petitioner points out that prosecution is also proposed. If prosecution is launched against the petitioner it is certainly open to the petitioner to contend that the case is to be proved on the basis of evidence adduced in the court. As far as the complaint with Ext.P4, I would think that as of now, merely on the basis of Ext.P4, petitioner cannot be surcharged. This is for the reason that before any order of surcharge is issued, an enquiry is to be conducted under Section 68(1) and on the basis of the enquiry the registrar must be satisfied all the ingredients contemplated in sub section 1 and therefore an opportunity should be given under Section 68(2). When an opportunity is given, if action is proposed to be taken under Section 68(2), certainly petitioner will be free to raise all his

objection against the proposed action. It is to be noted that at the stage when inspection was going on petitioner was issued with notice and even the petitioner does not dispute the fact that notice has been issued, but his explanation is that he was out of station during that time.

In such circumstances, without prejudice to the right of the petitioner to raise all the contentions at the appropriate stage, writ petition is disposed of.

(K.M.JOSEPH, JUDGE)

sv.